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REMARKS

Reconsideration of the application is respectfully requested, in view of the following remarks.

The application is directed in claim 14 to a method to produce a food product comprising probiotic Lactobacillus bacteria which have been rendered non-viable, the method including adding a mixture of viable and non-viable Lactobacillus into the food product, followed by inactivation of the viable probiotic Lactobacillus before substantial fermentation of the food product can take place, and wherein no substantial fermentation of the food product by the Lactobacillus will take place, the method including a pasteurization step for preparation or preservation of the food product. In claim 24, the invention is directed to a method to produce a food product comprising probiotic Lactobacillus bacteria which have been rendered non-viable, which comprises adding probiotic Lactobacillus bacteria to the food product, the bacteria being rendered non-viable before or after addition to the food product by means of pasteurization, and wherein no substantial fermentation of the food product by the Lactobacillus bacteria will take place by the non-viable bacteria.

Meister et al. US Patent No. 6,010,825 is directed to a spray drying process wherein the residence time is adjusted so as to obtain at least 1% survival of the microorganisms after drying. The objective of the Meister et al invention, as stated in their first full paragraph of column 2, is to overcome spray drying yield disadvantages without killing all the microorganisms in the process. In their Summary of the Invention, Meister et al. mention that the residence time is controlled or adjusted so as to obtain a survival of at least 1% to 10% or more of the microorganisms after drying. It is submitted that this is not teaching the same thing as "adding probiotic Lactobacillus bacterial into the food

product, said bacteria rendered non-viable before or after addition to the food product by means of pasteurization..." (claim 24). Meister et al.'s focus is on ensuring that some microorganisms survive the spray drying process. Therefore, it is requested that the rejection be withdrawn.

Klaver et al. US Patent No. 5,409,718 is directed to a method for preparing a fermented milk product wherein milk is incubated with a thermophilic *Lactobacillus* followed by destroying of the *Lactobacillus*. In the first paragraph of the Summary of the Invention, Klaver et al. indicate that it has now been found possible to prepare a product such as yogurt without pasteurizing the product and without equipment other than conventional dairy equipment. In contrast, claim 14 recites "the method including a pasteurization step for preparation or preservation of the food product." Therefore, it is not apparent how Klaver et al. could anticipate claim 14 and those depending therefrom or teach the present invention. Moreover, as to claim 24, Klaver et al. still do not teach to use pasteurization on the *Lactobacillus*. The Office points to no teaching that Klaver et al.'s procedure is pasteurization, for example, that it would be considered equivalent to applicant's in line time/temperature treatment.

Applicants cannot find the Yanagisawa reference listed on a form PTO-892 or PTO-1449. It would be appreciated if the Office could list it on Form PTO-892 if it is not already listed.

The Office appears to speculate concerning the presence of viable *Lactobacillus* in Yanagisawa et al. Moreover, the Office acknowledges that Yanagisawa et al. do not specifically teach pasteurization. Concerning the Office's assertion of motivation to pasteurize, it is not apparent why one of ordinary skill would go to the trouble of pasteurizing if it were not taught by the reference.

The undersigned is attempting to obtain dates of publication for the non-patent literature where missing.

As to the Section 112 rejection, it would be appreciated if the Office could clarify the basis of the rejection. Claim 24 seems clearly to say "by said non-viable bacteria" and it is not apparent what the issue is.

In view of the foregoing, it is respectfully requested that the application be allowed.

Respectfully submitted,



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